

PHYLLIS WOOD ET AL.

IBLA 80-152

Decided April 4, 1980

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring mining claims abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --  
Federal Land Policy and Management Act of 1976: Recordation of  
Mining Claims and Abandonment -- Mining Claims: Recordation

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of  
Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

3. Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: Phyllis Wood, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Phyllis Wood, hereinafter appellant, 1/ appeals from a decision dated November 2, 1979, of the Utah State Office, Bureau of Land Management (BLM), which declared void and abandoned lode mining claim "General Wood No. 1." The BLM, relying upon section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation, 43 CFR 3833.1-2(d), found appellant's filing to be unacceptable in that it was not accompanied by the required filing fee of \$5. The BLM further determined that pursuant to 43 CFR 3833.4(a) appellant's failure to file properly within the period prescribed in 43 CFR 3833.1-3 2/ was deemed conclusive abandonment of the mining claim and rendered it void.

[1] The applicable regulation, 43 CFR 3833.1-2(d) specifically provides: "Each claim or site filed shall be accompanied by a \$5 service fee which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner." This is a mandatory requirement. Without payment of the filing fee, there is no recordation. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979); 43 IBLA 239 (1979).

[2] 43 CFR 3833.4(a) states: "The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void." As a result of appellant's failure to submit these documents, with appropriate filing fees, in a timely fashion, BLM properly declared her mining claim abandoned and void pursuant to the regulation cited above. Ernest K. Lehman and Associates, 43 IBLA 1 (1979); Juan Munoz, 39 IBLA 72 (1979); Paul S. Coupey, 35 IBLA 112 (1979).

[3] Appellant, in her statement of reasons on appeal, indicated that she failed to submit the required filing fee because two newspaper articles, from which she learned of the necessity for filing, did not mention a \$5 fee. The Board has held in previous cases that all persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations. Bernard B. Gencorelli, 43 IBLA 7 (1979); Fred S. Ghedarducci, 41 IBLA 277 (1979).

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1/ Phyllis Wood appealed on behalf of herself and the other parties in interest, Bryner Wood and Kelly Wood.

2/ BLM's reference to 43 CFR 3833.1-3 appears to be in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Frederick Fishman  
Administrative Judge

